

June 12, 2013

Mr. Igor Tregub
1043 Virginia Street
Berkeley, CA 94710

Re: Your Request for Advice
Our File No. A-13-062

Dear Mr. Tregub:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the “Act”).¹ Our advice is limited to the provisions of the Act; this letter does not address any local campaign finance ordinance which may apply.

QUESTION

Does anything in the Act prohibit you from raising funds into your 2012 campaign account for the purpose of financing your legal defense to a libel action (which is still in the context of that 2012 election)?

CONCLUSION

No, the Act does not prohibit you from raising campaign funds into your 2012 campaign account to finance your legal defense to a libel action arising out of that campaign.

FACTS

You have a campaign account that was set up for a 2012 Rent Board election in the City of Berkeley. Over the course of calendar year 2013, you have used it sparingly and largely for the purpose of paying back some campaign debt incurred during that race.

You have also been named a defendant in civil litigation stemming from the 2012 campaign. The plaintiff, a fundraiser for an opposing slate of candidates, is suing you for libel based on a campaign email you sent out. You are currently in the process of setting up a separate

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

legal defense fund. In the meantime, you want to see if there is anything prohibiting you from raising funds into the 2012 campaign account for the purpose of financing your legal defense (which is still in the context of that 2012 election).

ANALYSIS

In general, the Act's provisions restricting the "personal use" of campaign funds are designed to prevent candidates, elected officials, and others who control the expenditures of campaign funds from benefiting privately from their campaign activities. The general rule is that an expenditure of campaign funds must be reasonably related to a political, legislative or governmental purpose. However, where an expenditure of campaign funds confers a substantial personal benefit² on any individual or individuals with authority to approve the expenditure of campaign funds held by the committee, the expenditure must be *directly* related to a political, legislative, or governmental purpose. (Section 89512.)

With regard to the use of campaign funds, Section 89510 provides that "[a]ll contributions deposited into the campaign account shall be deemed to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office." Section 89512 states:

"An expenditure to seek office is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a political purpose. An expenditure associated with holding office is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a legislative or governmental purpose. Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative or governmental purpose."

The payment of a candidate's attorney's fees would confer a substantial personal benefit on a candidate. As to using campaign funds for attorney's fees, Section 89514 states:

"Expenditures of campaign funds for attorney's fees and other costs in connection with administrative, civil, or criminal litigation are not directly related to a political, legislative, or governmental purpose except where the litigation is directly related to activities of a committee that are consistent with its primary objectives or arises directly out of a committee's activities or out of a candidate's or elected officer's activities, duties, or status as a candidate or elected officer, including, but not limited to, an action to enjoin defamation,³ defense of an action

² Section 89511(b)(3) defines "substantial personal benefit" as an expenditure of campaign funds which results in a direct personal benefit with a value of more than \$200 to a candidate, elected officer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee.

³ We note that an action for defamation alleges the issuance of a false statement about another person, which causes that person to suffer harm. Libel involves the making of defamatory statements in a printed or fixed medium, such as a magazine or newspaper.

to enjoin defamation, defense of an action brought for a violation of state or local campaign, disclosure, or election laws, and an action arising from an election contest or recount.”

With respect to actions for defamation, we have advised that a candidate may use campaign funds to *defend against* an action for defamation and to pay any monetary damages awarded in connection with the lawsuit. (*Bell* Advice Letter, No. I-92-514.) In the case where a candidate or officeholder is *initiating* an action for defamation, however, we have advised that campaign funds may be used for legal expenses related to enjoining defamation, but may not be used for seeking monetary damages because the recovery of damages would result in a substantial personal benefit and is not directly related to a political, legislative, or governmental purpose. (*Richter* Advice Letter, No. I-93-355, *Lively* Advice Letter, No. A-91-241, and *Williams* Advice Letter, No. A-91-500.)

You want to raise funds into your 2012 campaign account for the purpose of financing your legal defense to a libel action which arose in the 2012 election, based on a campaign email you sent out in that election. As you are defending an action for defamation, you may raise and spend campaign funds to defend against the libel suit and to pay any monetary damages that may be awarded in connection with the lawsuit.

In addition, you state that you are currently in the process of setting up a separate legal defense fund. Regulation 18530.45, available on the FPPC’s website, contains provisions concerning legal defense funds established by local candidates.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Hyla P. Wagner
Senior Counsel, Legal Division

HPW:jgl